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J.E. DAVIS CH. CLK

STATE OF MISSISSIPPI  
COUNTY OF DESOTO

**COLLATERAL ASSIGNMENT  
OF RENTS AND LEASES**

WHEREAS, ORANGE GROVE UTILITIES, INC., a Mississippi Corporation, Assignor, is the owner of the following described property, situated and being within DeSoto County, Mississippi, to-wit:

(See Exhibit "A")

and has requested BANCORPSOUTH BANK, Assignee, to loan Assignor the sum of Two Million Six Hundred Thousand and NO/100 Dollars (\$2,600,000.00); and

WHEREAS, Assignee has agreed to make such loan, provided Assignor executes Assignee's note in the sum of Two Million Six Hundred Thousand and NO/100 Dollars (\$2,600,000.00), secured by a deed of trust of even date herewith covering the premises above described to secure payment of the note, in like amount, and this assignment as additional collateral for the repayment of said indebtedness.

NOW, THEREFORE, in order to better secure the payment to Assignee of the principal and interest due on such indebtedness as and when payable, together with the principal and interest due on any other obligation of the Assignor held by the Assignee, now due or hereafter to become due thereon, and of all premiums of insurance on policies which the Assignee has effected and may effect under the terms of the deed of trust and of all taxes, and assessments, which may now be due and unpaid, or which may hereafter become due and a charge against or a lien upon the premises, with interest and penalties thereon, the Assignor assigns to the Assignee all of the rents, issues, and profits due and to become due from the premises, together with the lease (more fully described on the attached Exhibit "B"), agreements, service contracts, and insurance policies affecting the premises.

1. Collection of Rents. The Assignee may collect and receive from said Lessee, and any other tenants, lessees or other occupants now or at any time hereafter in possession of said premises, or of any part thereof, rents, issues and profits due and to become due from the premises. Said rents, issues and profits so collected by Assignee shall be applied to the full payment of the indebtedness evidenced by that certain promissory note from Assignor to Assignee in the principal sum of Two Million Six Hundred Thousand and NO/100 Dollars (\$2,600,000.00), of even date herewith, according to its terms. After a default under the Note or Loan Agreement of even date herewith,

Assignee shall have the power and authority to enter upon and take possession of the premises hereinabove described; to endorse the name of the Assignor or any subsequent owners of Assignor's interest in the premises on any checks, notes, or other instruments for the payment of money, to deposit the same in bank accounts, to give any and all acquittances or any other instrument in relation thereto in the name of the Assignor or the name of the Assignee and either in its own name or in the name of the Assignor, to institute, prosecute, settle, or compromise any summary or legal proceedings for the recovery of such rents, issues and profits, and to institute, prosecute, settle, or compromise any other proceedings for the protection of the said premises, for the recovery of any damages done to the premises, or for the abatement of any nuisance thereon, also the power to defend any legal proceedings brought against the Assignor arising out of the operation of the premises.

2. Authority to Lease. The Assignee shall have the right, but not the obligation, to lease or rent said premises, or any part thereof, to employ an agent to rent and manage the premises, for a reasonable compensation, to make any changes or improvements reasonably deemed by it necessary or expedient for the leasing or renting of the premises, to keep and maintain the premises in a tenantable and rentable condition, as well as in a good state of repair, and to purchase all equipment or supplies necessary or desirable in the operation and maintenance of the premises, and to pay for all gas, electricity, painting, repairs, wages of employees, and other items for the maintenance of the premises, to pay interest or principal on any taxes and assessments now due and unpaid or which may hereafter become due and a charge or lien against the premises, and to pay the principal and/or the interest of the note and deed of trust, now due or hereafter to become due, and to pay the premiums of all policies of insurance now or hereafter effected by the Assignee and to comply with orders of any governmental departments having jurisdiction against the premises, and to remove any construction or materialman's liens, security interest, or other liens against the premises, and in general, to pay all charges and expenses incurred in the operation of the premises.

3. Payment of Expenses. The Assignee shall have the right, but not the obligation, to pay the costs of all the matters herein mentioned out of the rents and other revenues received from the premises, and the cost of any such expenditures and of any payments which may be made by the Assignee under any of the provisions of this agreement, including reasonable expenses and charges for counsel fees, shall be charged to the Assignor and for all purposes shall be deemed to be

additional advances secured hereby, and by the deed of trust covering said premises of even date herewith, and they may be retained by the Assignee out of the rents of the premises.

4. Liability of Assignee. The Assignee shall in no way be liable for any act done or anything omitted by it but shall be liable only to account for all monies that it may receive hereunder, and nothing herein contained shall be construed as to prejudice its right to institute proceedings to foreclose the deed of trust covering said premises of even date herewith under the power of sale therein contained, or to prosecute any proceedings to judicially foreclose said deed of trust, or to enforce any lien on any other collateral which the Assignee may have, or prejudice any right which the Assignee may have by reason of any default, present or future, under the terms of said deed of trust.

5. Modification of Leases. The Assignor will not cancel, modify, or surrender any lease now existing in respect to any portion of the premises, nor reduce any rents, or change, modify, or waive any provision of any existing lease, without the consent in writing of the Assignee, and it shall enter into no lease on any portion of the premises without the written consent of the Assignee.

6. Failure to Account. The Assignee shall in no way be responsible or liable for any defalcation or failure to account for any rents collected by an agent or collector of the premises whom it may designate or appoint to collect or manage the property, nor shall the Assignee be in any way liable for the failure or refusal on its part to make repairs to the premises, or to otherwise carry out the obligations of the Assignor under the terms of the leases assigned hereby. The Assignee shall in no way be responsible for any debt incurred in respect of the premises.

7. Default. If the Borrower or any of the Guarantors, as applicable, shall fail to make punctual payments of the indebtedness due under the Note; or if Borrower shall fail to perform any obligation contained in this Agreement or contained in the Note, Deed of Trust, any Loan Document or any other agreement delivered by the Borrower to the Bank; or upon the happening, with respect to the Borrower or any of the Guarantors, of any of the following: a) the filing of a voluntary petition under any of the provisions of the Bankruptcy Act or amendments thereto; dissolution of Borrower; application for, or appointment of, a conservator, trustee, custodian, or receiver of Borrower or its property in any jurisdiction; b) the death or incapacity of Guarantor (except where an appropriate substitute guarantor is provided). Notwithstanding the foregoing, the death or incapacity of the Guarantor would not trigger an event of default if an acceptable substitute guarantor is proposed to

and agreed upon by the Bank. A substitute Guarantor shall be deemed acceptable to the Bank if the substitute Guarantor is the Estate of Clarence Johnson or the beneficiaries of the Estate of Clarence Johnson (following closure of the estate); c) failure to pay any real property tax when due; d) failure, after demand, to furnish any financial information or to permit the inspection of books or records of account as called for herein; e) the making of any intentional misrepresentation to the Bank for the purpose of obtaining credit or an extensions of credit. The occurrence of one or more of these shall be deemed an Event of Default.

Then, upon the occurrence of an Event of Default, all of the indebtedness, obligations, although not yet due, shall, without notice or demand, forthwith become and be immediately due and payable, notwithstanding any time or credit otherwise allowed under any of the Obligations or under any instrument evidence the same.

Upon the happening of any Event of Default, the Bank may, without demand of performance, advertisement or notice of intention to sell or notice of the time or place of sale on notice to redeem or other notice of demand whatsoever to or upon the Borrower or any other person (all and each of which are waived), forthwith collect, receive, appropriate and foreclose upon the Property or any Additional Security thereof and deliver the Collateral or any part of it in one or more parcels at public or private sale or sales, at any exchange, broker's board or at your offices or elsewhere, at such prices as the Bank may deem best, without assumption of any credit risk, with the right of the Bank upon any such sale or sales, to purchase the whole or any part of the Property so sold, free from any right or equity of redemption in the Borrower, which right or equity of redemption in the Borrower, which right or equity is waived and released. Notwithstanding anything contained herein to the contrary, Bank, at its sole option, may first exercise its rights in the Additional Security prior to foreclosure under the Deed of Trust.

The Bank may apply the net proceeds of any collection, receipt, appropriation, realization or sale after deducting all costs and expenses incurred therein or incidental to the care, safekeeping or otherwise of the Collateral or in any way relating to the Bank's rights hereunder, including reasonable counsel fees, to the payment in whole or in part, in such order as the Bank may elect, of the loan, whether then due or not due, absolute or contingent, and accounting for the surplus, if any, to the Borrower who shall remain liable to the Bank for the payment of any deficiency with accrued interest.

8. Rights of Assignee in Collateral. This assignment of rents is intended for use in connection with the loan secured by the note and deed of trust in this agreement mentioned. It is understood and agreed by the parties that this assignment shall in no manner prejudice the Assignee or estop the Assignee in any way in the exercise of its rights as beneficiary under the terms of such deed of trust, or to request the trustee to foreclose such deed of trust in accordance with the terms thereof under the power of sale therein contained, or as the plaintiff in any judicial foreclosure action which may be instituted or in connection with the enforcement of any lien which the Assignee may have upon any other collateral which may be held by the Assignee and this assignment shall be at all times subject to the exercise of any such rights which the Assignee may have and to any proceedings which the Assignee may be entitled to take in connection therewith.

9. Surplus Funds. The Assignee may (but shall be under no obligation to do so) turn over to the Assignor any surplus which the Assignee may have on hand after paying such expenses as Assignee may elect in connection with the operation and maintenance of the premises hereinabove described and after setting up any necessary reserve for the payment, upon the due date, of principal and interest on the indebtedness secured, and fixed charges against the premises. The turning over of any surplus by the Assignee to the Assignor shall in no way obligate the Assignee to continue to turn over such surplus.

10. Further Assignment. The Assignee is given the privilege of assigning all of its right, title and interest in and to this assignment to any person, firm, or corporation to whom the note and deed of trust are assigned, and in such manner so that the holder of the note and deed of trust shall have all of the rights and privileges given herein to the Assignee, as if such Assignee were originally named herein as the Assignee.

WITNESS OUR SIGNATURES, this 12<sup>th</sup> day of May, 2004.

ORANGE GROVE UTILITIES, INC., Assignor

BY:

Kathy J. Day, President

BY:

Steven H. Day, Vice-President

BANCORPSOUTH BANK, Assignee

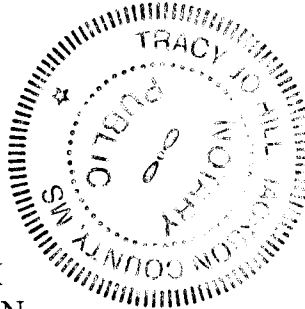
BY:

James M. Ray, South Mississippi  
Region President

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for the County and State aforesaid, on this 12th day of May, 2004, within my jurisdiction, the within named Kathy J. Day and Steven H. Day, who acknowledged that they are President and Vice-President, respectively, of Orange Grove Utilities, Inc., a Mississippi Corporation, and that for an on behalf of the said corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

(S E A L)



*Tracy Jo Hill*  
NOTARY PUBLIC

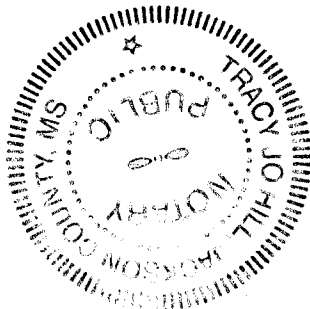
My Commission Expires:

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE  
MY COMMISSION EXPIRES: June 11, 2006  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for the County and State aforesaid, on this 12th day of May, 2004, within my jurisdiction, the within named James M. Ray, known to me to be the South Mississippi Region President of BancorpSouth Bank, a state banking association organized and existing under the laws of the State of Mississippi, who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned, as the act and deed of said state banking institution, after first having been duly authorized in the premises.

(S E A L)



*Tracy Jo Hill*  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE  
MY COMMISSION EXPIRES: June 11, 2006  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

THIS INSTRUMENT PREPARED BY:  
RECORD AND RETURN TO:  
MICHAEL B. McDERMOTT, ESQUIRE  
Page, Mannino, Peresich & McDermott, P.L.L.C.  
759 Vieux Marche Mall  
Biloxi, MS 39530  
(228) 374-2100

## EXHIBIT "A"

O'CHARLEY'S LEGAL DESCRIPTION

Final Plat of Lot 7 of the Crossings at Olive Branch, recorded in Deed Book 81 at Page 41 and 42 in the Office of the Chancery Clerk, Desoto County, Mississippi, more particularly described as:

Commencing at the Southwest corner of the Chili's parcel, Lot 6 of the Crossings at Olive Branch, as recorded in Deed Book 382 at Page 411, Desoto County, Mississippi; thence along a curve to the left having a radius of 4990.00 and a chord bearing of North 49°16'00" West and a chord length of 46.02 feet to the Point of Beginning of the herein described parcel; thence along a curve to the left having a radius of 4985.17 feet and a chord bearing of North 47°08'24" West and a chord length of 324.02 feet; thence run North 44°43'27" East, 223.49 feet; thence run South 45°19'12" East, 274.29 feet; thence run South 11°23'09" East, 49.06 feet; thence run along a curve to the left having a radius of 91.00 feet and a chord bearing of South 55°35'21" West and a chord length of 32.51 feet; thence run South 39°36'29" West, 51.13 feet; thence run South 38°59'28" West, 103.48 feet to the Point of Beginning, containing 1.58 acres, more or less.

ORANGE GROVE UTILITIES, INC.

BY:

  
Kathy J. Day, President

BY:

  
Steven H. Day, Vice-President

EXHIBIT "B"

1. Ground Lease Agreement dated effective as of November 18, 2002 by and between Bolton Properties, LLC and thereafter assigned to Orange Grove Utilities, Inc., ("Landlord") by virtue of an Assignment and Assumption of Ground Lease Agreement dated effective March 17, 2003, and O'Charley's, Inc., a Tennessee Corporation (O'Charley's), filed for record March 26, 2003 in Book 98 at Page 138.

Prepared by:

**Record & Return to:**  
**Page, Mannino, Peresich and McDermott**  
**759 Vieux Marche Mall**  
**Biloxi, MS 39530**  
**Tel. 228.374.2100**

Indexing: Lot 7, Crossings at Olive Branch

TN LOAN